



COMMONWEALTH of VIRGINIA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION

3600 West Broad Street, Richmond, Virginia 23230-4917
Telephone (804) 367-8500 TDD (804) 367-9753
<http://www.dpor.virginia.gov>

LOUISE FONTAINE WARE
DIRECTOR

SANDRA WHITLEY RYALS
CHIEF DEPUTY

DEPUTY DIRECTORS

KAREN W. O'NEAL
Licensing & Regulation

NICK A. CHRISTNER
Compliance & Investigations

STEVEN L. ARTHUR
Administration & Finance

DIRECTOR'S POLICY

#100-04

RELEASE OF INFORMATION

EFFECTIVE DATE: July 11, 2005

APPROVED BY: _____

I. HISTORY

This policy replaces Director's Policy #100-04, Release of Information effective November 3, 2004

II. PURPOSE

The purpose of this policy is to provide Department of Professional and Occupational Regulation employees with procedures for responding to requests for information.

III. POLICY

The Department of Professional and Occupational Regulation shall comply with the Freedom of Information Act (§ 2.2-3700 et seq. of the *Code of Virginia*) by adopting a predisposition to disclose public records. Specific exclusions shall apply in accordance with § 54.1-108 of the *Code of Virginia* and when the Department, in the exercise of sound discretion and in the absence of any board policy to the contrary, withholds information to protect individuals/businesses from personal embarrassment and disclosure of confidential information. Information requests submitted on a subpoena duces tecum shall be processed in accordance with Director's Policy #100-06, Subpoenas/Service of Process/Notices.

IV. DEFINITIONS

Custodian of Record

The public official, or the official's designee, in charge of an office having public records

Public Records

Recorded (including electronic) information that documents a transaction or activity by or with any public officer, agency or employee of state government. Regardless of physical form or characteristic, the recorded information is a public record if it is produced, collected,

received, or retained in pursuance of law or in connection with the transaction of public business.

V. PROCEDURES

A. PROCEDURES FOR RESPONDING TO INFORMATION REQUESTS

1. All requests for information are subject to the provisions of the Freedom of Information Act. Specific reference to the Freedom of Information Act is not necessary to invoke the provisions of the Act.
2. Generally, requests for written verification of information and photocopies of public records should be submitted by mail, e-mail or fax to ensure that the requester designates the requested records with reasonable specificity (§ 2.2-3704.B of the *Code of Virginia*). Telephone requests for specific records (i.e., school lists, case files or consent/final orders) are acceptable when the requested records are clearly identified and when the requester refuses to submit the request in writing.
3. All requests shall be delivered on the day of receipt to the appropriate operational area according to the following assigned responsibilities. Responses must be mailed within five workdays following receipt of the request, with “day one” being the workday immediately following receipt of the request in the designated work unit. An extension for an additional seven workdays may be requested in accordance with § 2.2-3704.B.4 of the *Code of Virginia*. The Public Records Manager shall, with noted exceptions, make all decisions concerning FOIA requests, consult with other parties when necessary and provide guidance to Department staff in determining the appropriate section to respond to information requests.
 - a) Public Records Section prepares:
 - (1) License Transcripts which provide evidence of licensure and licensing activity are usually requested for court submission and are frequently suggested as an alternative to personal testimony by Department staff
 - (2) Regulant lists available in an ASCII tab-delimited electronic format for distribution on diskette, CD or via e-mail
 - (3) Closed complaint file information and responses to requests for open complaint file information to ensure that the appropriate Code exemptions are cited in the response
 - (4) Authentication of documents (orders, regulation booklets, etc.) for submission as evidence in court in lieu of personal testimony by Department staff

- (5) Copies of a regulant's own application
- (6) Contractor and Real Estate Recovery Fund files
- b) Compliance and Investigations responds to general questions regarding the number and nature of complaints against specific individuals and businesses.
- c) Licensing and Regulation prepares:
 - (1) Certifications of Regulant Status
 - (2) Responses to general questions regarding license status and licensing requirements.
- 4. In accordance with § 2.2-3704.F of the *Code of Virginia*, reasonable charges for actual costs incurred in accessing, duplicating, supplying or searching for the requested records may be assessed by the Department for preparing FOIA responses. Where the custodian determines in advance that charges for producing the requested records are likely to exceed \$200, the custodian shall, before continuing to process the request, require the party requesting the information to agree to payment of an amount not to exceed the advance determination by five percent. Unless approved by the Policy, Planning and Public Records Director, Deputy Director or Director, payment in excess of \$200 shall be received prior to preparing the response. In situations where prior FOIA requests remain unpaid after 30 days, payment shall be required before processing any new record requests.

Photocopies of information shall be provided for a fee of \$0.25 per page for 40 or more pages, or a minimum charge of \$10.00. If the information consist of less than 40 pages, there shall be no fee; however, in situations where an individual requests an opportunity to review a complaint file, which requires a staff review and redaction of exempt information, a fee of \$10.00 per file may be imposed.

- 5. All non-routine requests for information from the media shall be directed to the Communications Director.
- 6. All requests for information from elected officials (with the exception of routine license transcript, closed investigation file and regulant list requests) shall be communicated to the Communications Director upon receipt.

B. CUSTODIAN OF RECORD

The Public Records Manager shall serve as custodian of all Department records with the following positions also designated as custodians for disclosure and authentication purposes.

1. The Executive Director of the board for which records are maintained shall serve as the records custodian. The Executive Director shall designate a second custodian who shall be authorized to authenticate licensing documents with their signatures.
2. The Human Resources Director shall serve as a custodian of all Personnel records.
3. The Deputy Director for Compliance and Investigations shall serve as the custodian of all complaint, investigation and adjudication (non-ADR) records.
4. The Director of Alternative Dispute Resolution shall serve as the custodian of all alternative dispute resolution records.
5. The Procurement/Contracts Administrator shall serve as the custodian of all procurement and contract records.
6. The Fiscal Director shall serve as the custodian of all financial records
7. The Director of Education and Examinations shall serve as custodian of all examination records.

C. REGULANT RECORDS/INFORMATION WHICH MAY BE RELEASED TO THE PUBLIC

1. The regulant records and information listed below may be released to the public via telephone, facsimile, e-mail, or any other form of correspondence.
 - a) License/certification/registration number
 - b) Initial date of licensure, certification or registration
 - c) Expiration date of license/certification/registration
 - d) Address(es) of record
 - e) Status of license/certification/registration
 - f) Fee records
 - g) Closed or probable cause complaints available on the Department's web site
 - h) Means of obtaining license in Virginia (e.g., exam, reciprocity, etc.)
 - i) Employer

- j) Qualified Individuals, Designated Employees, Principle Brokers, Compliance Agents, and Responsible Management
- k) License classifications
- l) Bond information

D. REGULANT RECORDS/INFORMATION NOT TO BE RELEASED TO THE PUBLIC

1. Examination scores, pass/fail status or number of times an examination was taken by an individual shall not be disclosed unless a board policy to the contrary exists.
2. Social security numbers shall not be released to the general public, but may, at the Executive Director's discretion, be disclosed on Certifications of Regulant Status in accordance with established procedure.
3. Credit card numbers
4. Bank account numbers
5. E-mail addresses
6. Tests or examinations used, administered or prepared by any public body for the purpose of evaluating qualifications for any license or certificate issued by the Department (§ 54.1-108.1 and § 2.2-3705.1.4 of the *Code of Virginia*) unless the Department deems that the test will no longer be used and disclosure would not jeopardize the security of future examinations.
7. Documents (including legal memos and other work products) compiled specifically for use in litigation or for use in an active administrative investigation concerning a matter that was the subject of a closed meeting in accordance with § 2.2-3711 of the *Code of Virginia*.
8. Documents from the Office of the Attorney General subject to attorney-client privilege in accordance with § 2.2-3705.1.2 of the *Code of Virginia*.
9. Tax records in accordance with § 2.2-3705.7.1 of the *Code of Virginia*.
10. Confidential Governor's Working Papers in accordance with § 2.2-3705.7.2 of the *Code of Virginia*.
11. Any other information which may compromise the privacy or safety of an individual or business (i.e., medical/mental records, scholastic records, etc.) may be disclosed only upon approval of the Director, Chief Deputy Director, Deputy Directors, or Policy, Planning and Public Records Director.

E. SPECIFIC CATEGORIES OF FOIA REQUESTS

1. Applications and related correspondence

a) Non-disclosure

- (1) Applications for admission to examinations or for licensure shall not be released to the general public (§ 54.1-108.2). This includes original, upgrade and reinstatement applications, as well as license maintenance documents that include social security numbers or other personal information.

b) Disclosure

- (1) Applications for admission to examinations or for licensure shall be made available to the individual regulant or applicant who is requesting a copy of their own records.
- (2) Copies of applications and related correspondence shall be made available to law enforcement agencies if the information is to be used in conjunction with an investigation. Such requests shall be made, in writing, on the official letterhead of the requesting law enforcement agency. A letter from the Department must accompany the information to verify that DPOR is releasing this information for investigative purposes only.

2. Bonds

Copies of, or information related to, bonds required for licensure, assessment bonds and completion bonds, to include the amount of the bond and the issuer, shall be released upon request.

3. Certifications of Regulant Status

Certifications of Regulant Status are available from licensing sections in accordance with established procedure at a charge of \$25.00 for up to three original copies of certification documents for the same individual/entity. Payment shall be received prior to document preparation.

4. Case Files

a) Application Case Files

(1) Non-disclosure

- (a) Open application case files are not subject to public disclosure.

- (b) Closed application files resulting in licensure approval shall not be disclosed to the public pursuant to § 54.1-108.2.

(2) Disclosure

- (a) Closed application case files resulting in licensure denial shall be subject to public disclosure with removal or redaction of any exempt information (e.g., the application document) with any exemptions cited in the transmittal letter.
- (b) Closed application case files resulting in licensure approval may only be disclosed to the individual regulant or applicant.

b) Criminal Activity Case Files

(1) Non-disclosure

Open case files documenting investigations of criminal (unlicensed) activity, are exempt from public disclosure under the provisions of § 54.1-108.3 of the *Code of Virginia*.

(2) Disclosure

- (a) Upon request, the Investigations Section of the Compliance and Investigations Division in collaboration with the Public Records Section shall release criminal incident information as defined in § 2.2-3706. of the *Code of Virginia* except in situations where disclosure is likely to jeopardize an investigation or the safety of an individual.
- (b) Following court disposition, closed unlicensed activity files may be disclosed to the defendant unless there is a perceived safety or privacy risk to a party involved in the case.
- (c) The number of closed criminal cases against an individual or company may be acknowledged.

c) Disciplinary Case Files

(1) Non-disclosure

Open complaint files are not subject to public disclosure. Nothing in this policy shall conflict with the release of complaint information during complaint investigations as provided for in the Administrative Process Act.

(2) Disclosure

- (a) Open complaints may be acknowledged when a Department investigation has determined that sufficient evidence exists to establish probable cause of a violation of the law or regulation.
- (b) Closed complaint files are subject to public disclosure.
- (c) Prior to releasing closed complaint files, information which is exempt from public disclosure (see section V.D of this policy) shall be removed or redacted.

d) Fair Housing Case Files

(1) Non-disclosure

Open case files are not acknowledged, nor subject to public disclosure although nothing in this policy shall conflict with the release of complaint information during complaint investigations as provided for in the Administrative Process Act and the Fair Housing Act.

(2) Disclosure

- (a) Upon request and following completion of the Board's investigation, information derived from an investigation and any final investigative report may be made available to only the aggrieved person(s) and the respondent(s).
- (b) Complaint dismissals resulting from the Board's determination that no reasonable cause exists to believe that a discriminatory housing practice occurred shall be disclosed to the public.
- (c) Requests for written conciliation agreements setting forth the resolution of any fair housing conciliation issues shall be handled in accordance with Section V.E.4.e.2.b of this policy.

e) Alternative Dispute Resolution Files

(1) Non-disclosure

All memoranda, work products or other materials contained in mediation case files are confidential. Any communication made in or in connection with a mediation that relates to the dispute, including communications to schedule mediation is also confidential. Materials and communications may be disclosed if all parties to the mediation agree, in writing, to waive the confidentiality or in

accordance with other provisions in § 2.2-4119.B of the *Code of Virginia*.

(2) Disclosure

- (a) Written settlement agreements resulting from an alternative dispute resolution such as mediation are subject to public disclosure unless the involved parties agree in writing that the agreement is to remain confidential.
- (b) Written conciliation agreements setting forth the resolution of any fair housing conciliation issues shall be made public unless the complainant and the respondent agree in writing that the agreement is to remain confidential and the Real Estate Board or Fair Housing Board determines that disclosure is not required to further the purposes of the Fair Housing Law.

5. Contracts and Procurement Records

Procurement/contract records may be released in accordance with § 11-52 of the *Code of Virginia* and section 2.13 of the Agency Procurement and Surplus Property Manual issued by the Department of General Services, Division of Purchases and Supply. Requests for this information shall be directed to the Procurement/Contract Administrator.

6. Examinations Papers and Answer Sheets

- a) Examination questions, papers, booklets, and answer sheets are exempt from public disclosure (§ 54.1-108.1 of the *Code of Virginia*).
- b) Examination scores may be released to candidates or other jurisdictions (in Certifications of Regulant Status) if permitted by board regulations and policy.
- c) Information relating to examinations may be released to sister state agencies upon the discretion of the Executive Director.
- d) No information regarding an individual candidate's scores or pass/fail status on an examination shall be released over the telephone.

7. Financial Records

Requests for financial records shall be directed to the Department's Fiscal Director.

8. License Transcripts

- a) License Transcripts are available from Public Records Section for a fee of \$40.00 per requested name/entity. Payment shall be received prior to document preparation.
- b) Governmental agencies or localities working in cooperation with the Department (e.g., Investigations Section of the Compliance and Investigations Division) may receive License Transcripts at no charge.

9. Minutes

Pursuant to § 2.2-3707.I of the Code of Virginia, draft minutes of board meetings shall be posted to the Internet no later than ten workdays after the conclusion of the meeting. Board meeting minutes are available to the public upon request to the appropriate board section. Draft minutes may be disclosed if they are clearly marked as a draft copy. Audio tape copies of board meetings and public hearings (if recorded) shall be available to requesters prior to the availability of the “draft” minutes at a charge not to exceed the actual reproduction, labor and mailing cost for each tape. Following the ratification of the minutes, all board meeting audio tapes shall be erased and reused or destroyed.

Final approved meeting minutes shall be posted to the Internet within three workdays of final approval of the minutes.

10. Personnel Records

- a) Any request for personnel information shall be referred to the Human Resources Office. The Human Resources Director shall refer to the Department of Human Resource Management Policy at <http://www.dhrm.virginia.gov/hrpolicy/policy/recdiscl.htm>, as well as opinions from the Attorney General’s Office, in responding to inquiries concerning personnel records.
- b) Pursuant to the Freedom of Information Act and DHRM Policy, only the information listed below shall be disclosed to third parties upon request and without requiring the consent of the subject employee. However, following disclosure, the Human Resource Office shall notify the subject employee of the release of information, including the name and address of the individual requesting the information.

(1) Employee’s position title;

(2) Employee’s job classification title;

(3) Dates of employment; and

(4) Annual salary, official salary or rate of pay if such pay exceeds \$10,000 per year.

Other personal information may not be disclosed to third parties without the written consent of the subject employee.

11. Property Registration Records

The Property Registration Office of the Real Estate Section shall process requests for property registration files. Requests for complaints shall be handled by the Public Records Section in accordance with Section A.4 of this policy.

12. Regulant Lists

Lists of regulants are available for public disclosure. All requests shall be referred to Public Records Section.

F. PROCEDURE FOR CORRECTING PERSONAL INFORMATION

Pursuant to § 2.2-3806.A.5 of the *Code of Virginia*, in the event that a regulant determines that the Department's information on that person is inaccurate, obsolete or irrelevant, the individual should submit a written request to correct, erase or amend the information to the Public Records Section. The Policy, Planning and Public Records Director shall be responsible for reviewing the request, determining if corrective action is warranted, and preparing a written response to the requester.

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